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7 *Coach Services, Inc.*

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 COACH SERVICES, INC., a Maryland
12 Corporation,

13 Plaintiff,

14 vs.

15 DQ SUNGLASSES CORP., a California
Corporation; WU LI, an individual; and
DOES 1-10, inclusive,

16 Defendants.
17

CASE NO. CV 10-3819 JHN (SHx)

[PROTECTIVE ORDER]

[DISCOVERY MATTER]

18 **DEFINITIONS**

19 1. As used in this Protective Order,

20 a. “Designating Party” means any Person who designates Material as
21 Confidential Material.

22 b. “Discovering Counsel” means counsel of record for a Discovering
23 Party.

24 c. “Discovering Party” means the Party to whom Material is being
25 Provided by a Producing Party.

26 d. “Confidential Material” refers to those materials designated as
27 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” as defined in Paragraph 2
28 below.

1 e. "Material" means any document, testimony or information in any
2 form or medium whatsoever, including, without limitation, any written or printed
3 matter, Provided in this action by a Party before or after the date of this Protective
4 Order.

5 f. "Party" means the Parties to this action, their attorneys of record
6 and their agents.

7 g. "Person" means any individual, corporation, partnership,
8 unincorporated association, governmental agency, or other business or governmental
9 entity whether a Party or not.

10 h. "Producing Party" means any Person who Provides Material during
11 the course of this action.

12 i. "Provide" means to produce any Material, whether voluntarily or
13 involuntarily, whether pursuant to request or process.

14 **CONFIDENTIAL DESIGNATION**

15 2. A Producing Party may designate as "CONFIDENTIAL" any material
16 provided to a Party which contains or discloses any of the following:

17 a. Non-public insider information, personnel files, financial
18 information, trade secrets, confidential commercial information, proprietary
19 information, or other confidential or sensitive information which the Producing Party
20 determines in good faith should be kept confidential; and

21 b. Information that the Party is under a duty to preserve as
22 confidential under an agreement with or other obligation to another Person.

23 c. The Producing Party may designate as "ATTORNEYS' EYES
24 ONLY," documents Parties contend contain or disclose materials which they in good
25 faith believe to be of an extremely high degree of current commercial sensitivity and/or
26 would provide a competitive advantage to its competitors if disclosed.

27 3. A Producing Party shall stamp as CONFIDENTIAL or ATTORNEYS'
28 EYES ONLY Materials which the Producing Party in good faith believes are entitled

1 to protection pursuant to the standards set forth in Paragraph 2 of this Order. A
2 Producing Party may designate Confidential Material for Protection under this order by
3 either of the following methods:

4 a. By physically marking it with the following inscription prior to
5 Providing it to a Party:

6 CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

7 or

8 ATTORNEYS' EYES ONLY SUBJECT TO PROTECTIVE ORDER

9 b. By identifying with specificity in writing to the Discovering Party
10 any previously Provided Material which was not designated as Confidential Material
11 prior to its having been Provided. For purposes of this method of designation, it will be
12 a sufficiently specific identification to refer to the bates numbers or deposition page
13 numbers of previously Provided Material. Where a Producing Party designates
14 previously Provided Material as Confidential Material pursuant to this subparagraph,
15 the Producing Party will follow the procedures set forth in the previous subparagraph
16 for designating Confidential Material, and Provide to the Discovering Party additional
17 copies of the previously Provided Material marked with the inscription described in the
18 previous subparagraph. Upon receipt of the additional copies which comply with the
19 procedures set forth in the previous subparagraph, the Discovering Party will
20 immediately return to the Producing Party the previously Provided Material, or
21 alternatively, will destroy all the previously Provided Material, at the option of the
22 Producing Party. For previously Provided Material which was not designated as
23 Confidential Material at the time of its being Provided, this Protective Order shall
24 apply to such materials beginning on the date that the Producing Party makes such
25 designation.

26 All costs associated with the designations of materials as "Confidential" or
27 "Attorneys' Eyes Only" involving, for example, the cost of binding confidential
28 portions of deposition transcripts, shall be initially borne by the Party making the

1 designation with no prejudice regarding the Designating Party's ability to recover its
2 costs upon completion of the litigation.

3 The designation of documents as "Confidential" or "Attorneys' Eyes Only" does
4 not entitle the parties to have those documents filed under seal. An application,
5 including a stipulated application to file documents under seal must comply with
6 Local Rule 79-5.

7 **RESTRICTION ON USE OF CONFIDENTIAL MATERIAL**

8 4. Confidential Material designated as CONFIDENTIAL shall not be
9 disclosed, nor shall its contents be disclosed, to any person other than those described
10 in Paragraph 7 of this Protective Order and other than in accordance with the terms,
11 conditions and restrictions of this Protective Order. Confidential Material designated as
12 ATTORNEYS' EYES ONLY shall not be disclosed, nor shall its contents be disclosed
13 to any person other than those described in Paragraph 8 of this Protective Order.

14 5. Confidential Material Provided by a Producing Party to a Discovering
15 Party shall not be used by the Discovering Party or anyone other than the Producing
16 Party, specifically including the persons identified in Paragraphs 7 or 8 as appropriate,
17 for any purpose, including, without limitation any personal, business, governmental,
18 commercial, publicity, public-relations, or litigation (administrative or judicial)
19 purpose, other than the prosecution or defense of this action.

20 6. All Confidential Material shall be kept secure by Discovering Counsel
21 and access to Confidential Material shall be limited to persons authorized pursuant to
22 Paragraphs 7 or 8 of this Protective Order.

23 7. For purposes of the preparation of this action, and subject to the terms,
24 conditions, and restrictions of this Protective Order, Discovering Counsel may disclose
25 Material designated as CONFIDENTIAL and the contents of Material designated as
26 CONFIDENTIAL only to the following persons:

1 a. Counsel of record working on this action on behalf of any party and
2 counsel's employees who are directly participating in this action, including counsel's
3 partners, associates, paralegals, assistants, secretaries, and clerical staff.

4 b. In-house counsel and such in-house counsel's employees who are
5 directly participating in this action, including counsel's paralegals, assistants,
6 secretaries, and clerical staff.

7 c. Court and deposition reporters and their staff.

8 d. The Court and any Person employed by the Court whose duties
9 require access to Material designated as CONFIDENTIAL.

10 e. Witnesses at depositions or pre-trial proceedings, in accordance
11 with procedures set forth in Paragraphs 11-13.

12 f. Non-party experts and consultants assisting counsel with respect to
13 this action and their secretarial, technical and clerical employees who are actively
14 assisting in the preparation of this action, in accordance with the procedures set forth in
15 Paragraphs 11-13.

16 g. Officers, directors and employees of the Parties hereto who have a
17 need to review Material designated as CONFIDENTIAL to assist in connection with
18 this litigation, subject to the limitations set forth herein;

19 h. Photocopy service personnel who photocopied or assisted in the
20 photocopying or delivering of documents in this litigation;

21 i. Any Person identified on the face of any such Material designated
22 as CONFIDENTIAL as an author or recipient thereof;

23 j. Any Person who is determined to have been an author and/or
24 previous recipient of the Material designated as CONFIDENTIAL, but is not identified
25 on the face thereof, provided there is prior testimony of actual authorship or receipt of
26 the Material designated as CONFIDENTIAL by such Person; and

27 k. Any Person who the Parties agree in writing may receive Material
28 designated as CONFIDENTIAL.

1 The Parties shall make a good faith effort to limit dissemination of Material designated
2 as CONFIDENTIAL within these categories to Persons who have a reasonable need
3 for access thereto.

4 8. For purposes of the preparation of this action, and subject to the terms,
5 conditions, and restrictions of this Protective Order, the Discovering Counsel may
6 disclose confidential financial Material designated as ATTORNEYS' EYES ONLY,
7 and the contents of Material so designated, only to the following persons:

8 a. Counsel of record for the Parties to this action and counsel's
9 employees who are directly participating in this action, including counsel's partners,
10 associates, paralegals, assistants, secretarial, and clerical staff.

11 b. Court and deposition reporters and their staff.

12 c. The Court and any person employed by the Court whose duties
13 require access to Material designated as ATTORNEYS' EYES ONLY.

14 d. Witnesses at depositions or pre-trial proceedings, in accordance
15 with procedures set forth in paragraphs 11-13.

16 e. Experts and consultants assisting counsel with respect to this action
17 and their secretarial, technical and clerical employees who are actively assisting in the
18 preparation of this action, in accordance with the procedures set forth in paragraphs
19 11-13.

20 f. Any Person identified on the face of any such Material designated
21 as ATTORNEYS' EYES ONLY as an author or recipient thereof; and

22 g. Any Person who is determined to have been an author and/or
23 previous recipient of the Material designated as ATTORNEYS' EYES ONLY, but is
24 not identified on the face thereof, provided there is prior testimony of actual authorship
25 or receipt of the Material designated as ATTORNEYS' EYES ONLY by such Person;
26 and

27 h. Any Person who the Parties agree in writing may receive Material
28 designated as ATTORNEYS' EYES ONLY.

UNDERTAKING TO BE BOUND BY PROTECTIVE ORDER

9. Before Discovering Counsel may disclose Confidential Material to any Person described in subparagraphs 7(f), 7(g), or 8(f) above, the Person to whom disclosure is to be made shall receive a copy of this Protective Order, shall read Paragraphs 1, 4, 5, 6, 7, 8, 9 and 10 (including the subparagraphs where applicable) of the Protective Order, shall evidence his or her agreement to be bound by the terms, conditions, and restrictions of the Protective Order by signing an undertaking in the form attached hereto as **Exhibit A** (the "Undertaking"), and shall retain the copy of this Protective Order, with a copy of his or her signed Undertaking attached. Discovering Counsel shall keep a copy of the signed Undertaking for each person described in subparagraphs 7(f), 7(g), or 8(f) to whom Discovering Counsel discloses Confidential Material.

10. The individuals designated in subparagraph 8(a) above, are specifically prohibited from publishing, releasing, or otherwise disclosing Material designated as ATTORNEYS' EYES ONLY, or the contents thereof, to any directors, officers, or employees of the company for which the individual is employed, or to any other persons not authorized under this Protective Order to receive such information. The designated individuals in subparagraph 8(a) shall retain all ATTORNEYS' EYES ONLY material in a secure manner under separate and confidential file, so as to avoid inadvertent access by, or disclosure to, unauthorized persons.

DEPOSITIONS

11. Those portions of depositions taken by any Party at which any Material designated as CONFIDENTIAL is used or inquired into, may not be conducted in the presence of any Person(s) other than (a) the deposition witness, (b) his or her counsel, and (c) Persons authorized under Paragraph 7 of this Protective Order to view such Confidential Material. During those portions of depositions in which Material designated ATTORNEYS' EYES ONLY is used or inquired into, only those persons authorized under Paragraph 8 to view such Materials may be present.

1 12. Counsel for any deponent may designate testimony or exhibits as
2 Confidential Material by indicating on the record at the deposition that the testimony
3 of the deponent or any exhibits to his or her testimony are to be treated as Confidential
4 Material. Counsel for any Party may designate exhibits in which that Party has a
5 cognizable interest as Confidential Material by indicating on the record at the
6 deposition that such exhibit(s) are to be treated as Confidential Material. Failure of
7 counsel to designate testimony or exhibits as confidential at deposition, however, shall
8 not constitute a waiver of the protected status of the testimony or exhibits. Within
9 thirty calendar days of receipt of the transcript of the deposition, or thirty days of the
10 date on which this Protective Order becomes effective, whichever occurs last, counsel
11 shall be entitled to designate specific testimony or exhibits as Confidential Material. If
12 counsel for the deponent or Party fails to designate the transcript or exhibits as
13 Confidential within the above-described thirty day period, any other Party shall be
14 entitled to treat the transcript or exhibits as non-confidential material. For purposes of
15 this Paragraph 12, this Protective Order shall be deemed “effective” on the date on
16 which it has been executed by all counsel for the Parties.

17 13. When Material disclosed during a deposition is designated Confidential
18 Material at the time testimony is given, the reporter shall separately transcribe those
19 portions of the testimony so designated, shall mark the face of the transcript in
20 accordance with Paragraph 3 above, and shall maintain that portion of the transcript or
21 exhibits in separate files marked to designate the confidentiality of their contents. The
22 reporter shall not file or lodge with the Court any Confidential Material without
23 obtaining written consent from the Party who designated the Material as Confidential
24 Material. For convenience, if a deposition transcript or exhibit contains repeated
25 references to Confidential Material which cannot conveniently be segregated from
26 non-confidential material, any Party may request that the entire transcript or exhibit be
27 maintained by the reporter as Confidential Material.
28

USE OF CONFIDENTIAL MATERIAL IN PLEADINGS AND OTHER COURT PAPERS

14. If any Party or non-party seeks to file or lodge with the Court any Confidential Material, such materials shall be submitted to the Court in accordance with the procedures set forth in Local Rule 79-5.1. No documents may be filed or lodged under seal absent a court order pertinent to the specific document(s). If a Party wishes to file or lodge documents under seal, the other Party shall not unreasonably withhold agreement to such procedure. If an agreement is reached, the Parties shall submit to the Court a Stipulation and Proposed Order for such filing or lodging under seal. If no such agreement is reached, then the proponent of lodging or filing under seal shall submit an Application and Proposed Order pursuant to Local Rule 79-5.1.

OBJECTIONS TO DESIGNATION

15. Any Party may at any time notify the Designating Party in writing of its contention that specified Material designated as Confidential Material is not properly so designated because such Material does not warrant protection under applicable law. The Designating Party shall within five court days, meet and confer in good faith with the Party challenging the designation in an attempt to resolve such dispute. The Designating Party shall have ten (10) calendar days from the initial meet and confer to file a motion to uphold the designation of the material in question. Any such motion shall be set for hearing on the first available calendar date. If no motion is filed within 10 days, or any mutually agreed to extension of time, all Parties may treat the Material as non-confidential. To maintain the designation as Confidential Material and to prevail on such a motion, the Designating Party must show by a preponderance of the evidence that there is good cause for the designation as Confidential Material. Pending resolution of any motion filed pursuant to this Paragraph, all Persons bound by this Protective Order shall continue to treat the Material which is the subject of the motion as Confidential Material.

1 20. Nothing in this Protective Order shall be deemed to limit, prejudice, or
 2 waive any right of any Party or Person (a) to resist or compel discovery with respect to,
 3 or to seek to obtain additional or different protection for, Material claimed to be
 4 protected work product or privileged under California or federal law, Material as to
 5 which the Producing Party claims a legal obligation not to disclose, or Material not
 6 required to be provided pursuant to California law; (b) to seek to modify or obtain
 7 relief from any aspect of this Protective Order; (c) to object to the use, relevance, or
 8 admissibility at trial or otherwise of any Material, whether or not designated in whole
 9 or in part as Confidential Material governed by this Protective Order; or (d) otherwise
 10 to require that discovery be conducted according to governing laws and rules.

11 21. Designation of Material as Confidential Material on the face of such
 12 Material shall have no effect on the authenticity or admissibility of such Material at
 13 trial.

14 22. This Protective Order shall not preclude any Person from waiving the
 15 applicability of this Protective Order with respect to any Confidential Material
 16 Provided by that Person or using any Confidential Material Provided by that Person or
 17 using any Confidential Material owned by that Person in any manner that Person
 18 deems appropriate.

19 23. This Protective Order shall not affect any contractual, statutory or other
 20 legal obligation or the rights of any Party or Person with respect to Confidential
 21 Material designated by that Party.

22 24. The restrictions set out in the Protective Order shall not apply to any
 23 Material which:

- 24 a. At the time it is Provided is available to the public;
- 25 b. After it is Provided, becomes available to the public through no act,
 26 or failure to act, of the Discovering Party; or
- 27 c. The Discovering Party can show

- 1 i. Was already known to the Discovering Party independently
2 of receipt of the Confidential Material in this or prior litigation; or
3 ii. Was received by the Discovering Party, after the time it was
4 designated as Confidential Material hereunder, from a third party having the right to
5 make such disclosure.

6 25. If at any time any Material protected by this Protective Order is
7 subpoenaed from the Discovering Party by any Court, administrative or legislative
8 body, or is requested by any other Person or entity purporting to have authority to
9 require the production of such material, the Party to whom the subpoena or other
10 request is directed shall immediately give written notice thereof to the Producing Party
11 with respect to Confidential Material sought and shall afford the Producing Party
12 reasonable opportunity to pursue formal objections to such disclosures. If the
13 Producing Party does not prevail on its objections to such disclosure, the Discovering
14 Party may produce the Confidential Material without violating this Protective Order.

15 **SUBMISSION TO COURT**

16 26. The Parties agree to submit this Protective Order to the Court for adoption
17 as an order of the Court. The Parties reserve the right to seek, upon good cause,
18 modification of this Protective Order by the Court.

19
20 **IT IS SO ORDERED.**

21
22 Date: October 27, 2010



Honorable Stephen J. Hillman
United States Magistrate Judge

EXHIBIT A

UNDERTAKING TO BE BOUND BY THE PRETRIAL PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DOCUMENTS

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its
entirety and understand the Protective Order that was issued by the United States
District Court for the Central District of California in the case of *Coach Services, Inc.*
v. DQ Sunglasses Corp., No. CV 10-3819 JHN (SHx). I agree to comply with and to
be bound by all the terms of this Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____, 2010

City and State where sworn and signed: _____

Signed: _____
[Print Name] [Signature]